HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE S. ANANDA REDDY

WRIT PETITION No.18788 of 2005

Date: 25-06-2007.

Between :

M/s.Tejaswi Enterprises, Vijayawada,
rep. by its Proprietor.

.....Petitioner

And

Telecom Regulatory Authority of India, New Delhi &
others.

.....Respondents.

HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE S. ANANDA REDDY

WRIT PETITION No.18788 of 2005

ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

Heard learned counsel for the parties.

The question is whether the sale of SIM cards and rechargeable coupons would attract sales tax or not. In the provisional assessment order, the Commercial Tax Officer has held against the assessee therefore, this writ petition was filed. In the meantime, an occasion arose for the Supreme Court to consider such issues in the judgment reported in **Bharat Sanchar Nigam Ltd. v. Union of India**[1]. In this judgment, the Supreme Court has not decided the issue and left it open for the authorities to decide, but it has given some guidelines in para 87 of the judgment as under—

> "**87**. It is not possible for this Court to opine finally on the issue. What a SIM card represents is ultimately a question of fact as has been correctly submitted by the States. In

determining the issue, however the assessing authorities will have to keep in mind the following principles : If the SIM card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers, then a SIM card cannot be charged separately to sales tax. It would depend ultimately upon the intention of the parties. If the parties intended that the SIM card would be a separate object of sale, it would be open to the sales tax authorities to levy sales tax thereon. There is insufficient material on the basis of which we can reach a decision. However we emphasise that if the sale of a SIM card is merely incidental to the service being provided and only facilitates the identification of the subscribers, their credit and other details, it would not be assessable to sales tax. In our opinion the High Court ought not to have finally determined the issue. In any event, the High Court erred in including the cost of the service in the value of the SIM card by relying on the aspects doctrine. That doctrine merely deals with legislative competence. As has been succinctly stated in *Federation of Hotel & Restaurant Association of India v. Union of India (1989) 3 SCC 634* – "subjects which in one aspect and for one purpose fall within the power of a particular Legislature may in another aspect and for another purpose fall within another legislative power. They might be overlapping; but the overlapping must be in law. The same transaction may involve two or more taxable events in its different aspects. But the fact that there is overlapping dos not detract from the distinctiveness of the aspects". No one denies the legislative competence of States to levy sales tax on sales provided that the necessary

> concomitants of a sale are present in the transaction and the sale is distinctly discernible in the transaction."

In this view of the matter, we set aside the provisional assessment order only with regard to the SIM cards and rechargeable coupons and direct the Commercial Tax Officer to make fresh assessment keeping in view the directions of the Supreme Court. The petitioner shall not take any objection to the fresh assessment on the grounds of limitation.

Writ petition is disposed of accordingly.

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BILAL NAZKI, J

25th June 2007

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S. ANANDA REDDY, J

ajr

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[1] 145 STC 91